◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE P.S. NARAYANA

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+ W.A.No. 822 OF 2004

% Dated 26.11.2004

M. Sunil Chakravarthy and others

…. Appellants

Vs.

$ The Principa, Sreekalahasteeswara Institute of Technology, Srikalahasti, Chittoor Dist. And another

….Respondents

! Counsel for Appellants: Mr. M.V.S. Suresh Kumar

^Counsel for Respondent: Mr. C. Kondanda Ram and Mr. V. Venugopal Rao

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1976 SC 376;
2. AIR 1973 SC 221;
3. AIR 1966 SC 707;
4. 2000 (4) ALD 630 (DB);
5. 2002 (3) ALD 667 (DB);

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL NO : 822 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/04/2004 in WP NO: 1394 OF 2004 on the file of the High Court.)

Between:

1 M. Sunil Chakravarthy, S/o. M. Radha Krishnaiah,
R/o. 17-2-154, Poola Street, Tirupathi, Chittoor District.
2 C. Sree laxmi, D/o. C. Venkataramana Reddy,
R/o. 303, E. Sabsen Junction,Super Market Upstairs, Tirupathi, Chittoor District.
3 M. Vidya Sagar, S/o. M. Sathya keerthi,
R/o. 5-484 A, Santhamaydanam Street, Srikalahasthi, Chittoor District.
4 G. Madan Mohan, S/o. G. Bhaskar,
R/o. 18-4-111/C 11B, Railway Colony Extn., Tirupathi, Chittoor District.
5 V. Dinesh Kumar,l S/o. V. Venkateswarlu,

R/o. 16-403 A, Padmavathi Nilayam, Mahatma Gandhi Road, SRN Colony,' Srkikalahasthi, Chittoor District.

..... APPELLANT(S)

AND

1 The Principal Sreekalahasteeswara Institute of Technology, Srkikalahasti, Chittoor District.
2 The Rector, Jawaharlal Nehru Technological University, Masab Tank, Hyderabad.

.....RESPONDENT(S)

Counsel for the Appellant: MR.M.V.S.SURESH KUMAR

Counsel for the Respondents: Mr. C. Kodanda Rao and MR.VEERLAVENUGOPLA RAO

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE P.S.NARAYANA

W.A.NO. 822 OF 2004

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

A short point is involved in this writ appeal as to whether cancellation of the examination of the writ petitioners on the ground of short of attendance was legal or not.

The facts are not at dispute. All the writ petitioners are engineering students of different semesters and they fell short of attendance. Their names were displayed by the college as having been detained. Thereafter the students along with their parents went to the college and the college management forwarded their candidature to the university for examination. Once the university

found that the candidates were not eligible, they cancelled their candidature. It was challenged before the learned single Judge who has dismissed the writ petition. These candidates have put in attendance ranging from 27% to 35%, whereas the requirement under the relevant regulation was 75%. The College Academic Committee has the power to condone the shortage of attendance in case of those candidates who have attended 65% of classes and beyond this there is no power with anybody to condone the shortage. This is not disputed. The only question which remains is whether the shortage can be condoned by any authority, if there is no power under the regulations and rules. This question has already come up before various Courts and has been decided. The learned counsel for the writ petitioners/appellants submits that the learned single Judge was not right in holding that the judgment of the Supreme Court reported in *Shri Krishnan Vs. The Kurukshetra* had no application in the matter. Before going to the other judgments, we would first deal with this judgment. It was altogether a different case in different circumstances. There were different grounds taken for cancellation of the candidature of the petitioner in that case. At one stage it was stated that the candidate was involved in offences under Sections 376, 366 and 363 of I.P.C. On the other occasion it was said that he had not obtained permission from superior officers as the course was being run for the persons in service. At one instance it was also said that the candidate had not attended the requisite number of lectures, but a certificate was issued by the principal certifying that he had attended the prescribed number of academic years. There was a dispute also with regard to the fact that whether he had attended the classes or not. It is also not clear from the judgment whether there was any stipulation that beyond a certain point of time, shortage of attendance could be condoned. Therefore the learned single Judge was right in not relying on this judgment. However, on the other hand, we have judgments which are on all fours as far as the present case is concerned. We would not be multiplying the judgments, but we would only rely on a few judgments. In *Ashok Kumar Thakur, Appellant v. University of*

Himachal Pradesh and others the Supreme Court held in paras 4 and 5,

> “4. The only question that now remains is whether the petitioner's deficiency in the matter of attendance could be condoned by any authority. The final lecture statement of the Bilaspur and Dharamsala colleges shows that the petitioner was short of 20 lectures in Civics, of 18 lectures in Economics, of 10 lectures in History and of 8 lectures in English. Now the rules as to condoning of deficiency in the matter of attendance of lectures are to be found in Chapter XV of the Punjab University Calendar 1969. Volume III (Rules). The relevant rule is 1 (a) and the material portion of it is in the following terms :
>
> "(1) Taking into consideration the results of the House examinations:
>
> (a) The Principal of a College affiliated in the Faculties of Arts, Science and Oriental Learning may condone the deficiency in lectures as under :
>
> (i) Upto 15 lecturers in each of the subjects;"
>
> Since the petitioner's deficiency in the matter of attendance exceeded 18 lectures in Economics and 20 lectures in Civics, it was beyond the jurisdiction or competence of the Principal to condone this deficiency. In our opinion this completely destroys the case of the petitioner.
>
> 5. Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the Principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court,

and dismiss the petitioner's appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs."

We may also refer to judgments reported in *Principal, Patna College, Patna and others Vs. Kalyan Srinivas Raman* , *Akilesh Lumani and others Vs. Principal, Sir C.R. Reddy Autonomous College, Eluru* and *K. Pradeep Vs. Jawaharlal Nehru Technological University, Hyderabad and others* . Regulation No.5 lays down,

"5. Attendance.

i. A student has to put in a minimum of 75% of attendance in aggregate of all the subjects for acquiring credits in the I year and/or each semester thereafter.

ii. Condonation of shortage of attendance in aggregate upto 10% (65% and above and below 75%) in each semester or I year may be granted by the College Academic Committee.

iii. A student will not be promoted to the next semester unless he satisfies the attendance requirement of the present semester/I year.

Note:

a. Shortage of Attendance below 65% in aggregate shall in no case be condoned.

b. Student whose shortage of attendance is not condoned in any semester/I year are not eligible to take their end examination of that class and their registration shall stand cancelled. They may seek re-admission for that semester/I year when offered next.

c. Condonation of shortage of attendance as stipulated in 5 (ii) above shall be granted on genuine and valid grounds with supporting evidence.

d. A stipulated fee shall be payable towards condonation of shortage of attendance."

Since nobody has power to condone the attendance below 65%, therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the regulations cannot be subject matter of a mandamus.

For these reasons, though we have sympathy with the petitioners, but we have no option, but to dismiss the writ appeal. No costs.

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BN J.

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PSN J.

Dt.26.11.2004

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